

No. 86-2026

8
Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH F. SPANIOLO, JR.
CLERK

October Term, 1986

MICHAEL K. DEAVER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE UNITED
STATES IN OPPOSITION

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	4
CONCLUSION	5

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cable News Network, Inc., et al</u> <u>v. United States et al, No.</u> <u>87-5245 (D.C. Cir. 7/15/87)</u>	4
<u>Cohen v. Beneficial Ind. Loan</u> <u>Corp., 337 U.S. 541 (1949)</u>	4
<u>United States v. Hollywood Motor</u> <u>Car Co., 458 U.S. 263 (1982)</u>	4
<u>United States v. McDonald,</u> <u>435 U.S. 850 (1978)</u>	5

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STATEMENT OF THE CASE

Indictment Crim. No. 87-0096 was filed on March 18, 1987. On March 26, 1987, the District Court scheduled the trial of this indictment to commence on June 8, 1987.

Petitioner filed a motion to dismiss the indictment on April 20, 1987. This motion was denied on May 13, 1987, and an application for reconsideration was denied on May 21, 1987. Petitioner appealed the denial of the motions to the Court of Appeals on May 26, 1987. The Government immediately moved to dismiss the appeal on the ground that the order denying the pre-trial motion was a non-final, non-appealable order. The originally scheduled trial date of June 8, 1987 passed without a ruling on this motion, so the District Court postponed the trial until such time as the motion or appeal was decided. On June 15, 1987, the Court of Appeals granted the Government's motion to dismiss the appeal, and directed that its mandate issue forthwith. (Pet. App. A).

Upon the return of the case to the District Court, the trial date was firmly set for July 13, 1987. This was done over

petitioner's application for further delay of the trial. On June 22, 1987, petitioner filed a petition for a writ of certiorari to have the Supreme Court review the Court of Appeals order of June 15, 1987, dismissing the appeal. On June 24, 1987, petitioner moved the Court of Appeals for recall of its mandate and a stay of proceedings in the District Court until Supreme Court disposition of the petition for a writ of certiorari. This motion was denied on June 30, 1987. Petitioner then sought a stay from Chief Justice Rehnquist, which was also denied.

On July 13, 1987, trial commenced with jury selection in the District Court. Jury selection was, however, terminated by the District Court on July 16, 1987, in light of the July 15, 1987 opinion of the Court of Appeals upholding a challenge by representatives of the news media to the jury selection procedures employed by the

District Court. Cable News Network, Inc.
et al. v. United States et al., No.
87-5245 (D.C. Cir. July 15, 1987).

Trial has been rescheduled to commence on October 19, 1987.

REASONS FOR DENYING THE WRIT

1. As the foregoing statement of facts indicates, the petition seeks review of a plainly correct ruling of the Court of Appeals that the District Court's order denying a motion to dismiss an indictment is not a final order, and therefore not appealable. Cohen v. Beneficial Ind. Loan Corp., 337 U.S. 541 (1949).

2. This Court has long recognized that interlocutory appeals in criminal cases are contrary to the statutory limit on the jurisdiction of the courts of appeals to "final decisions of the district courts," 28 U.S.C. §1291, and inimical to the sound administration of the criminal law. United States v. Hollywood Motor Car

Co., 458 U.S. 263, 265 (1982); United States v. McDonald, 435 U.S. 850 (1978).

3. The procedural posture of this case also makes review by this Court at the present time inappropriate. Trial is scheduled to commence in the District Court on October 19, 1987. If the trial ends in acquittal, the petition will be rendered moot. In event of conviction, and affirmance of that conviction by the Court of Appeals, only then would review by this Court of the issues contained in the petition be appropriate.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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